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October 15, 2002

***NOTICE OF EX PARTE
PRESENTATION***

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW B204
Washington, DC 20554

Re: **Telephone Number Portability**, CC Docket No. 95-116.

Dear Ms. Dortch:

The attached written *Ex Parte* Presentation concerning the above-referenced proceeding was sent to Wireline Competition Bureau Chief William Maher by the undersigned on October 15, 2002, on behalf of the United States Telecom Association. In accordance with FCC Rule 1.1206(b)(1)¹, this Notice of *Ex Parte* Presentation and a copy of the referenced *Ex Parte* Presentation are being filed with you electronically for inclusion in the public record. Should you have any questions, please contact me at (202) 326-7300.

Sincerely,

/s/

Michael Thomas McMenamin
Associate Counsel

Attachment

cc: William Maher
Tamara Preiss
Deena Shetler
Lenworth Smith
Margaret Dailey

¹ 47 C.F.R. § 1.1206(b)(1).



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EX PARTE PRESENTATION

William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5 C450
Washington, DC 20554

Re: **Telephone Number Portability**, CC Docket No. 95-116.

Dear Mr. Maher:

I write on behalf of the United States Telecom Association (USTA) to express USTA's support for the National Exchange Carrier Association, Inc. (NECA) Petition for Reconsideration, filed on July 15, 2002, of the FCC's *Order on Reconsideration*,² released February 15, 2002, in the above-referenced proceeding. The argument presented by NECA in its Petition for Reconsideration is not new, but rather an argument also advocated by USTA in this proceeding that the FCC incorrectly considered in its *Order on Reconsideration*.³ The heart of NECA's argument is that the Commission should reconsider its decision in the *Order on Reconsideration* to not allow non-local number portability (LNP) capable incumbent local exchange carriers (ILEC) to recover carrier-specific ongoing LNP-related costs through normal accounting and separations processes.

The FCC, in the *Third Report and Order*,⁴ allowed but did not require ILECs to recover their carrier specific costs directly related to providing number portability through a federally tariffed end-user charge, but the FCC did not provide a mechanism for non-LNP capable ILECs to recover their LNP-related costs. In the FCC's *Order on Reconsideration*, the Commission recognized that non-LNP capable ILECs have "long-term number portability shared costs and additional query costs as a result of their participation in an EAS calling plan would be financially disadvantaged if they were not allowed recovery of these costs."⁵ The FCC concluded "that a non-LNP capable LEC that participates in an EAS calling plan with any one of the 100 largest MSAs or with an adjacent number portability-capable LEC, may recover its costs for payment of query charges as eligible number portability costs through an end user charge"⁶ In addition, the FCC stated that it would not "create a special category of cost

² Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order on Reconsideration and Order on Application for Review*, 17 FCC Rcd 2578 (2002) (Order on Reconsideration).

³ *Id.* at ¶ 43. The FCC stated that "USTA argues that the Commission should allow incumbent LECs without long-term number portability capability to book and recover these costs through the regular accounting and separations process." See USTA Petition for Clarification and/or Reconsideration filed July 29, 1999, at 5.

⁴ Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order*, 13 FCC Rcd 11701 (1998).

⁵ See *Order on Reconsideration* at ¶ 51.

⁶ *Id.* at ¶ 53.

recovery for small and rural carriers.”⁷ By doing so, the FCC has taken the view that the non-LNP capable carrier recovery problem can be solved through assessing end-user charges to recover long-term LNP costs.⁸ We disagree.

Non-LNP ILECs that do not fit the FCC’s parameters are left without the ability to recover any of their ongoing LNP-related costs, such as supporting regional Number Portability Administration Centers as well as N-1 query costs for intraLATA toll calls. In addition, the FCC’s rules do not provide non-LNP capable ILECs a cost recovery mechanism that would allow for the recovery of their actual costs. We believe that these costs should be considered normal network operating costs recoverable through separations and access charge procedures.

Moreover, the FCC in the *Order for Reconsideration* determined that ILECs that have implemented LNP may recover the same costs through access charges at the end of the five-year period for end-user charge recovery.⁹ USTA agrees with NECA that this is “disparate” treatment and that there is no reason why the FCC should permit access charge recovery of on-going LNP-related costs after the five-year implementation period while prohibiting access charge recovery of the same costs prior to LNP implementation. Non-LNP capable ILECs are incurring normal costs through LNP administration and N-1 query costs, not implementation costs. These costs are no different than the costs being incurred by LNP capable ILECs after the five-year end-user implementation period has expired. In sum, the FCC should allow for consistent recovery of these costs by both LNP and non-LNP capable carriers.

The FCC should remedy this situation by allowing non-LNP capable ILECs to recover normal network LNP-related costs through separations and access charges procedures, rather than assessing end-users who may not derive a direct benefit, but nevertheless are being charged a fee. Moreover, the FCC has permitted “rate of return carriers to recover the costs of thousand block number pooling (TBNP) implementation in their interstate access charges ‘in the ordinary course,’¹⁰ despite the fact that TBNP costs cover the same type of functions as LNP costs and are governed by the same statutory cost recovery provisions.”¹¹

⁷ *Id.* at ¶ 53.

⁸ *Id.* at ¶ 53.

⁹ *Id.* at ¶ 87.

¹⁰ See Number Resource Optimization, CC Docket No. 99-200, Implementation of the Local Competition Provisions of the Telecommunications Act of the Telecommunications Act of 1996, CC Docket No. 96-98, Telephone Number Portability, CC docket No. 95-116, *Third Report and Order and Second Order on Reconsideration*, CC Docket No. 99-200, 17 FCC Rcd 252 (2002) at ¶ 24.

¹¹ NECA Petition for Reconsideration at 3-4.

William Maher, Chief
Wireline Competition Bureau
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Thus, USTA strongly urges the FCC to entertain NECA's Petition for Reconsideration and modify section 52.33¹² of the Commission's rules to allow for non-LNP capable ILECs to recover carrier-specific LNP-related costs through normal accounting and separations procedures.

Sincerely,

/s/_____
Michael Thomas McMenamin
Associate Counsel

cc: William Maher
Tamara Preiss
Deena Shetler
Lenworth Smith
Margaret Dailey

¹² 47 CFR § 52.33.